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Attorneys for Defendant
ENTERPRISE TRUST COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RUTHE P. GOMEZ,

Plaintiff,

vs.

TRADERIGHT CORP. d/b/a TRADERIGHT
SECURITIES, INC., ENTERPRISE TRUST
COMPANY, and LOCKE HAVEN, LLC,

Defendants.

Case No. C 08-00266 WDB

**NOTICE OF MOTION AND MOTION TO
WITHDRAW APPEARANCE**

Date: April 23, 2008
Time: 4:00 p.m.
Location: Courtroom 4, 3rd Floor
Judge: Hon. Wayne D. Brazil

NOTICE IS HEREBY GIVEN that on April 23, 2008 at 4:00 p.m., or as soon as the matter may be heard, if necessary, in Courtroom 4 of the above-titled Court, 1301 Clay Street, Oakland, California 94612, Howrey LLP hereby moves this Court pursuant to Local Rule 11-5 to allow it to withdraw as counsel for Defendant Enterprise Trust Company, and to no longer participate in these proceedings. This motion is based upon this Notice of Motion and Motion, the declarations supporting this motion, the papers and pleadings of record in this case, and upon other matters as may be presented to the Court if there is a hearing on this motion.

In support of this motion, Howrey LLP states as follows:

1. In late November 2007, Howrey was retained to represent jointly Defendant Enterprise Trust Company ("Enterprise"), John H. Lohmeier, and Rebecca Townsend (collectively, "Defendants"): in matters related to complaints by Ruthe Gomez and her company, Advisory Financial

1 Consultants, Inc. (AFC); matters related to a complaint then pending against Defendants in a Financial
2 Industry Regulatory Authority (FINRA) arbitration; matters related to the Securities and Exchange
3 Commission's (SEC) request for information; and matters related to investigations by the Illinois state
4 banking and insurance regulators (collectively, the "Matters"). (Declaration of Stephen D. Libowsky
5 In Support of Motion to Withdraw Appearance ("Libowsky Decl."), ¶ 2.) Howrey confirmed that it
6 was appropriate and desirable for the Defendants to be represented jointly by the same law firm, and
7 the Defendants agreed. (Id.)

8 2. On December 19, 2007, an action related to the Matters pending in other jurisdictions was
9 commenced in the Superior Court of the State of California in and for the County of Alameda, entitled
10 *Ruthe P. Gomez v. TradeRight Corp., Enterprise Trust Company, Locke Haven, LLC, and DOES 1*
11 *through 50, inclusive*, as Case Number RG07362098 ("California State Action"). (See Dkt No. 1.)
12 The Superior Court of the State of California in and for the County of Alameda issued on December
13 19, 2007, a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction. (See
14 id.)

15 3. On January 15, 2008, the California State Action was removed to the United States District
16 Court for the Northern District of California. (Dkt. No. 1.) This Court filed on January 15, 2008 an
17 Order Setting Initial Case Management Conference and ADR Deadlines. (Dkt. No. 3.) The time for
18 filing Enterprise's and TradeRight Securities, Inc.'s responses to Plaintiff's Complaint has twice been
19 extended via stipulation of the parties granted by the Court. (Dkt. Nos. 6, 7, 10 & 11.) Responses are
20 currently due March 14, 2008. (Dkt. No. 11.)

21 4. Howrey received telephonic notice from the SEC on the afternoon of Monday, March 3,
22 2008, that a complaint was being filed against the Defendants in the United States District Court for
23 the Northern District of Illinois and that a temporary restraining order, an asset freeze and a receiver
24 were being sought on an expedited basis. Howrey attorneys participated in discussions with the SEC
25 and a telephonic hearing with Judge Kennelly held that afternoon which resulted in the agreed to
26 restraining and asset freeze orders. (Libowsky Decl., ¶ 3.) Over the next two days, Howrey attorneys
27 participated in the telephonic hearing with the United States District Court for the Northern District of
28 Illinois on Tuesday, March 4, 2008, participated in several discussions with the SEC, and were

1 physically present and participated in the evidentiary hearing on Wednesday, March 5, 2008. (Id.)
2 After that hearing, the United States District Court for the Northern District of Illinois entered a verbal
3 order appointing a Receiver. That order was memorialized in a written order dated March 6, 2008.
4 (Id.)

5 5. During the week of March 3, 2008, while dealing with the Matters, including those
6 occurring in United States District Court for the Northern District of Illinois, Howrey was involved in
7 discussions with the SEC and the appointed Receiver. (Id., ¶ 4.) Howrey had been involved for
8 several weeks in producing information and documents to the SEC and represented the individual
9 Defendants in deposition testimony before the SEC and FINRA. (Id.) During this time period,
10 Howrey believed that it was appropriate and desirable that the Defendants be represented by a single
11 law firm and represented the Defendants jointly. (Id.)

12 6. For the first time, on Friday, March 7, 2008, Howrey became aware that it could no longer
13 represent the Defendants jointly or any of them individually consistent with its professional
14 obligations. Howrey moves to withdraw as counsel for Defendant Enterprise Trust Company in this
15 case because Howrey's professional obligations prevent its representation of any Defendant
16 individually. (Id., ¶ 5.)

17 7. Howrey, after lengthy internal discussions with the appropriate individuals in the firm
18 responsible for analyzing professional responsibility issues, immediately informed John H. Lohmeier,
19 Rebecca Townsend, Enterprise, and the appointed Receiver, Phillip L. Stern, that it could no longer
20 represent the Defendants individually in the Matters or any of the related actions, including this case.
21 (Id., ¶ 6.)

22 8. On March 10, 2008, Howrey informed counsel for Plaintiff Ruthe P. Gomez in writing
23 concerning its withdrawal as counsel in the Matters pending in other jurisdictions. (Id., ¶ 7; Ex. 1.) On
24 March 13, 2008, Howrey informed counsel for Plaintiff Ruthe P. Gomez telephonically of its intent to
25 also withdraw in this particular case. (Declaration of Matthew F. Greinert In Support of Motion to
26 Withdraw Appearance ("Greinert Decl.", ¶ 2.)

27 9. Plaintiff Ruthe P. Gomez does not oppose this Motion for Withdrawal of Appearance.
28 (Greinert Decl., ¶ 3.)

1 10. Due to the present motion and a deadline of March 14, 2008 for Enterprise's and
2 TradeRight Securities, Inc.'s responses to Plaintiff's Complaint, the parties filed on March 13, 2008, a
3 Stipulation Extending Time to File Response to Complaint. The stipulation extends until March 28,
4 2008 Enterprise's and TradeRight Securities, Inc.'s time to respond to Plaintiff's Complaint to allow
5 Enterprise to obtain substitute counsel if it desires and if this motion is granted.

6 11. In its professional judgment, Howrey can no longer represent Enterprise further in this
7 matter. (Libowsky Decl., ¶ 8.) In light of the sensitivity of the issues related to this decision, Howrey
8 is not able, consistent with its professional obligations, to more fully articulate its judgment and the
9 reasons related to that judgment. (Id.) If the Court desires a more complete discussion of this
10 situation, Howrey will certainly do whatever it can to satisfy the Court, including an *in camera*
11 discussion of the situation.

12 12. At all times since informing Enterprise of its need to withdraw as counsel for this case,
13 Howrey has stated that it will do whatever it can appropriately do to transition the case to new counsel
14 and to protect the interests of Enterprise. Howrey has and will continue to do so. (Id., ¶ 9.)

15 13. Although this motion is not filed on an expedited basis, Howrey respectfully requests the
16 Court to consider granting this motion as soon as practicable to permit Enterprise sufficient time to
17 retain substitute counsel should it choose to do so.

18 WHEREFORE, Howrey LLP respectfully requests that this Court grant its motion to withdraw
19 from this matter.

20 Dated: March 14, 2008

Respectfully submitted,

21 HOWREY LLP

22
23
24 By: /s/
25 Benjamin K. Riley
26 Attorneys for Defendant
27 ENTERPRISE TRUST COMPANY
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RUTHE P. GOMEZ,

Plaintiff,

vs.

TRADERIGHT CORP. d/b/a TRADERIGHT
SECURITIES, INC., ENTERPRISE TRUST
COMPANY, and LOCKE HAVEN, LLC,

Defendants.

Case No. C 08-00266 WDB

**[PROPOSED] ORDER GRANTING
MOTION TO WITHDRAW APPEARANCE**

This matter comes before the Court on Howrey LLP's (including its attorneys Benjamin K. Riley, Stephen D. Libowsky, and Helen C. MacLeod) motion to withdraw as counsel for Defendant Enterprise Trust Company. The Court, having reviewed and considered the Motion, facts set forth therein, and supporting declarations, hereby GRANTS the Motion.

IT IS SO ORDERED.

Dated: _____

The Honorable Wayne D. Brazil
United States Magistrate Judge

1 Benjamin K. Riley (SBN 112007)
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San Francisco, California 94105
3 Telephone: (415) 848-4900
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5 Attorneys for Defendant
ENTERPRISE TRUST COMPANY

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8 UNITED STATES DISTRICT COURT
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10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 RUTHE P. GOMEZ,

13 Plaintiff,

14 vs.

15 TRADERIGHT CORP. d/b/a TRADERIGHT
SECURITIES, INC., ENTERPRISE TRUST
COMPANY, and LOCKE HAVEN, LLC,

16 Defendants.
17

Case No. C 08-00266 WDB

**DECLARATION OF MATTHEW F.
GREINERT IN SUPPORT OF MOTION TO
WITHDRAW APPEARANCE**

Date: April 23, 2008

Time: 4:00 p.m.

Location: Courtroom 4, 3rd Floor

Judge: Hon. Wayne D. Brazil

18 I, Matthew F. Greinert, declare:


19 1. I am an attorney at the law firm of Howrey LLP, counsel of record for Enterprise Trust
20 Company in the above-captioned action. I am a member in good standing of the State Bar of
21 California and have been admitted to practice before this Court. I have personal knowledge of the
22 facts set forth in this Declaration and, if called as a witness, could and would testify competently to
23 such facts under oath.

24 2. On March 13, 2008, I spoke via telephone with Patrick Baldwin and Christopher Mader,
25 counsel for Plaintiff Ruthe P. Gomez, to confirm Howrey's intent to withdraw as counsel from the
26 action pending in this Court.
27
28

3. Mr. Baldwin stated that he would not oppose the Motion for Withdrawal of Appearance.

Executed at San Francisco, California on March 14, 2008.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Matthew F. Grenert

Benjamin K. Riley (SBN 112007)
HOWREY LLP
525 Market Street, Suite 3600
San Francisco, California 94105
Telephone: (415) 848-4900
Facsimile: (415) 848-4999

Attorneys for Defendant
ENTERPRISE TRUST COMPANY

UNITED STATES DISTRICT COURT
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Defendants.

Case No. C 08-00266 WDB

**DECLARATION OF STEPHEN D.
LIBOWSKY IN SUPPORT OF MOTION TO
WITHDRAW APPEARANCE**

Date: April 23, 2008
Time: 4:00 p.m.
Location: Courtroom 4, 3rd Floor
Judge: Hon. Wayne D. Brazil

I, Stephen D. Libowsky, declare:

1. I am an attorney at law, admitted to practice law in the States of Georgia and Illinois, and a partner in the law firm of Howrey LLP. I am counsel for Defendant Enterprise Trust Company. I have personal knowledge of the facts contained in this declaration, and if called upon to do so, I could and would testify competently thereto.

2. In late November 2007, Howrey was retained to represent jointly Defendant Enterprise Trust Company ("Enterprise"), John H. Lohmeier, and Rebecca Townsend (collectively, "Defendants"): in matters related to complaints by Ruthe Gomez and her company, Advisory Financial Consultants, Inc. (AFC); matters related to a complaint then pending against Defendants in a Financial Industry Regulatory Authority (FINRA) arbitration; matters related to the Securities and Exchange

1 Commission's (SEC) request for information; and matters related to investigations by the Illinois state
2 banking and insurance regulators (collectively, the "Matters"). Howrey confirmed that it was
3 appropriate and desirable for the Defendants to be represented jointly by the same law firm, and the
4 Defendants agreed.

5 3. Howrey received telephonic notice from the SEC on the afternoon of Monday, March 3,
6 2008, that a complaint was being filed against the Defendants in the United States District Court for
7 the Northern District of Illinois and that a temporary restraining order, an asset freeze and a receiver
8 were being sought on an expedited basis. Howrey attorneys participated in discussions with the SEC
9 and a telephonic hearing with Judge Kennelly held that afternoon which resulted in the agreed to
10 restraining and asset freeze orders. Over the next two days, Howrey attorneys participated in the
11 telephonic hearing with the United States District Court for the Northern District of Illinois on
12 Tuesday, March 4, 2008, participated in several discussions with the SEC, and were physically present
13 and participated in the evidentiary hearing on Wednesday, March 5, 2008. After that hearing, the
14 United States District Court for the Northern District of Illinois entered a verbal order appointing a
15 Receiver. That order was memorialized in a written order dated March 6, 2008.

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17 occurring in United States District Court for the Northern District of Illinois, Howrey was involved in
18 discussions with the SEC and the appointed Receiver. Howrey had been involved for several weeks in
19 producing information and documents to the SEC and represented the individual Defendants in
20 deposition testimony before the SEC and FINRA. During this time period, Howrey believed that it
21 was appropriate and desirable that the Defendants be represented by a single law firm and represented
22 the Defendants jointly.

23 5. For the first time, on Friday, March 7, 2008, Howrey became aware that it could no
24 longer represent the Defendants jointly or any of them individually consistent with its professional
25 obligations. Howrey moves to withdraw as counsel for Defendant Enterprise Trust Company in this
26 case because Howrey's professional obligations prevent its representation of any Defendant
27 individually.

1 6. After lengthy internal discussions with the appropriate individuals in the firm
2 responsible for analyzing professional responsibility issues, I immediately informed John H. Lohmeier,
3 Rebecca Townsend, Enterprise, and the appointed Receiver, Phillip L. Stern, that it could no longer
4 represent the Defendants individually in the Matters or any of the related actions, including this case.

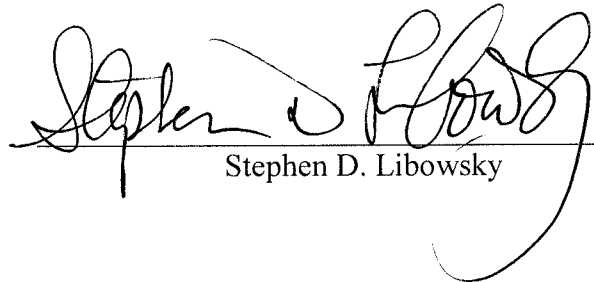
5 7. On March 10, 2008, I informed counsel for Plaintiff Ruthe P. Gomez in writing
6 concerning Howrey's withdrawal as counsel in the Matters pending in other jurisdictions.

7 8. In its professional judgment, Howrey can no longer represent Enterprise further in this
8 matter. In light of the sensitivity of the issues related to this decision, Howrey is not able, consistent
9 with its professional obligations, to more fully articulate its judgment and the reasons related to that
10 judgment.

11 9. At all times since informing Enterprise of its need to withdraw as counsel for this case,
12 Howrey has stated that it will do whatever it can appropriately do to transition the case to new counsel
13 and to protect the interests of Enterprise. Howrey has and will continue to do so.

14 Executed at Chicago, Illinois, on March 14, 2008.

15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct.

17
18 
19 Stephen D. Libowsky



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March 10, 2008

BY EMAIL & MESSENGER

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Re: Enterprise Trust Company

Ladies and Gentlemen:

This letter hereby informs you that our firm is no longer representing Enterprise Trust Company, John Lohmeier or Rebecca Townsend. We will orderly wind down and transition these matters.

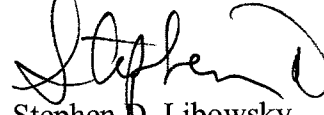
AMSTERDAM BRUSSELS CHICAGO EAST PALO ALTO HOUSTON IRVINE LONDON LOS ANGELES
MADRID MUNICH NEW YORK NORTHERN VIRGINIA PARIS SALT LAKE CITY SAN FRANCISCO TAIPEI WASHINGTON, DC

HOWREY
LLP

Philip L. Stern, Esq.
Mr. Paul Ashworth
Ms. Bernadette Cole
Patrick Baldwin, Esq.
Ms. Laura D. McNamire
Mr. Steven J. Levine
March 10, 2008
Page 2

Please call me if you have any questions.

Very truly yours,


Stephen D. Libowsky



SDL:clr

cc (by Email & Federal Express): John Lohmeier
Rebecca Townsend

STATE OF CALIFORNIA)
) ss.:
COUNTY OF SAN FRANCISCO)

On March 14, 2008, I served on the interested parties in said action the within:

Motion to Withdraw Appearance

Declaration of Stephen D. Libowsky In Support of Motion to Withdraw Appearance

Declaration of Matthew F. Greinert In Support of Motion to Withdraw Appearance

[Proposed] Order Granting Motion to Withdraw Appearance

by placing a true copy thereof in a sealed envelope(s) addressed as stated on the attached mailing list and causing such envelope(s) to be deposited at San Francisco, California.

☒ (OVERNIGHT DELIVERY) by depositing in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivering to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed as stated on the attached mailing list, with fees for overnight delivery paid or provided for and causing such envelope(s) to be delivered by said express service carrier.

☒ (EMAIL/ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the submission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on March 14, 2008, at San Francisco, California.

Karol Tobar
(Type or print name)

(Signature)

SERVICE LIST

BY EMAIL

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